

**OPINION
66-175**

August 18, 1966 (OPINION)

Mr. Elmer Olson, Secretary

Public Service Commission

RE: Public Service Commission - Utilities - Imposing of Penalties

This is in reply to your request for an opinion as to whether or not the Public Service Commission has authority under chapter 49-07 of the North Dakota Century Code to impose monetary penalties upon utilities which violate either a provision under Title 49 of the North Dakota Century Code, or a Commission rule or regulation.

The Public Service Commission is a creature of statute. As a result, if it is to have authority to impose monetary penalties under chapter 49-07 of the North Dakota Century Code, such authority must affirmatively appear in the statute before it can be invoked or exercised.

Chapter 49-02 of the North Dakota Century Code sets out the general powers of the Public Service Commission. There is no special authorization in either chapter 49-02 or any other provisions of the North Dakota Century Code allowing the Commission to impose its own penalties. To compel obedience to its lawful orders, the Commission must institute the proper proceedings, in the name of the State, in the court having proper jurisdiction over the parties. This would not prevent the Commission from claiming a monetary penalty, but to collect the penalty, the Commission must still institute proper legal proceedings. The court may or may not uphold the Commissioner's fine.

It is our opinion that the Public Service Commission cannot act as a judicial body to impose a criminal monetary penalty upon utilities which violate either a provision under Title 49 of the North Dakota Century Code, or a Commission rule or regulation. The Commission may, however, assess a civil monetary penalty, but the adjudication and collection of such penalty must go through proper legal proceedings.

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